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TRIAL REPORT
SUMMARY/TESTIMONY/PROJECTION

CASE NAME: Cipollone DATE: 20-Apr-88 p.m. PAGE 1 OF 3

SUMMARY:

Walters continued her cross examination of Dr. Sommers this afternoon, concentrating on Rose Cipollone's 1981 surgical pathology report.

Sarokin announced that his opinion on the defendants' motion for a mistrial would be filed and available before court in the morning. Defendants filed and handed to the judge a memorandum supporting last week's motion for a mistrial. Edell asked to be notified as to which witness defendants intended to call on Monday, May 2 (there will be no court next week) pursuant to the "three day rule." It was quickly pointed out to him that he had vigorously argued during plaintiff's case that the three day rule only applied to "working days" and defendants should not be obligated to notify him before next Wednesday.

WITNESS: Dr. Sheldon C. Sommers

IDENTITY: Defendants' Specific Causation Expert and Former Scientific Director of CTR

EXAMINER: CROSS: Cynthia Walters TIME: 2 hrs. 20 min.

TESTIMONY:

Walters resumed her cross by having Sommers acknowledge that he is a good friend with Dr. Gould, one of defendants' expert pathologists on ATC.

Walters focused the remainder of her cross this afternoon on Rose's 1981 surgical pathology report which was co-authored by Sommers. Walters directed Sommers' attention to the portion of the report which gave the gross description (prepared by Dr. Fernandez) and she later focused on the microscopic analysis that was dictated by Dr. Sommers after his review of the slides of the frozen section of Rose's tumor. Walters began by having

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Dr. Sommers acknowledge that Dr. Fernandez had described the color of the tumor as yellow and this contributed to Sommers' diagnosis of ATC. She then proceeded to try to show a photograph of Rose's lung lobe to the jury so they could see that, in fact, the mass was white rather than yellow. She also reviewed various surgical textbooks which described tumor color as a diagnosing criteria for various types of cancer in an effort to establish that none made reference to the color yellow. Early in his testimony Sommers established that he did not rely on any single criteria in arriving at his diagnosis of ATC.

Walters next turned to the surgical report which discussed whether Rose's tumor was "well-circumscribed." Sommers acknowledged that this, too, was a factor in determining whether a tumor was ATC. Next, Walters went into great detail on the significance of the location of the tumor as a diagnostic criteria and tried to have Sommers admit that Rose's tumor was central rather than peripheral and therefore was more consistent with small cell. When Sommers would not agree with Walters' definitions of the various sectors of the lung, she tried to have him review Rose's x-ray to prove that "the tumor is right smack in the middle." Sirridge objected that radiology was not within Sommers' expertise and Sarokin suggested various questions for Walters to ask in order to attempt to lay a foundation for Sommers' reference to the x-ray. However, Sommers professed to have no expertise in the area and testified that he did not routinely rely on x-rays in his field of specialty so this testimony was not allowed. Since she was frustrated in her prior efforts, Walters returned to a simple hand-drawn chart of the lung which was done by Sommers and tried to have him admit that the lung tumor was in the middle of the diagram. Sommers explained that it was impossible to determine whether a tumor was central or peripheral on a flat, two dimensional drawing and he emphasized that the lung had to be viewed as a round object with three dimensions.

ASSESSMENT:

Walters' cross was extremely tedious and the jury was frequently observed "nodding off." Walters seems to be wedded to an extensive outline and when Sommers does not give the precise answer she expects, she launches into elaborate questioning to establish what appear to be fairly minor points. The judge is obviously impatient with this pace of the testimony although he has not said anything in front of the jury. During an early sidebar this afternoon, the judge commented that "This testimony isn't exactly keeping us on the edge of our seats." To some extent, the judge has attributed the length of the examination to the witness. On one occasion, he told Dr. Sommers "It would be helpful, Doctor, if you would answer the question that is being asked." On another occasion when Walters asked if Sommers had received any training

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in radiology and Sommers began an explanation of his medical school "elective" course in the subject, Sarokin said "Doctor, spare us -- I don't want to know who was in the class." However, the comments by the judge were mild and the latter comment evoked a laugh by everyone. After the jury left at the end of the day, the judge stood behind his chair, patted his heart and said "I have to lie down after all this excitement."

Although the questioning is laborious and the answers are lengthy and technical, Sommers is again being given the opportunity to demonstrate his vast knowledge in the field of pathology.

PROJECTION:

Walters advised Sirridge that she may have as much as one-half day more of cross-examination since she has only covered the initial pathology record. There is some thought that perhaps that Edell will suggest that she shorten her examination. Furst will take the stand when Sommers is completed.

Monday, April 25 -- Judge Sarokin's motion day -- no Cipollone trial. No report will be transmitted.

April 26 through April 29 -- Court will not be in session; Judge Sarokin will be out of town. No reports will be transmitted.

Monday, May 9 -- Judge Sarokin's motion day -- no Cipollone trial. No report will be transmitted.

Friday, May 13 -- Court will not be in session; reason unknown. No report will be transmitted.

Monday, May 16 -- Court will not be in session; reason unknown. No report will be transmitted.

Monday, May 23 -- Judge Sarokin's motion day -- no Cipollone trial. No report will be transmitted.

Monday, May 30 -- Court holiday -- Memorial Day. No report will be transmitted.

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